

1 Ambika Kumar, WSBA #38237
Sara A. Fairchild, WSBA #54419
2 DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
3 Seattle, WA 98104-1610
Telephone: 206.622.3150
4 Facsimile: 206.757.7700

5 John A. DiLorenzo (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
6 560 SW 10th Ave, Suite 700
Portland, OR 97205
7 Telephone: (503) 241-2300
8 Fax: (503) 778-5299

9
10
11 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

12 FAYE IRENE GUENTHER,
13 an individual,

14 Plaintiffs,

15 v.

16 JOSEPH H. EMMONS, individually,
AND OSPREY FIELD CONSULTING
17 LLC, a limited liability company,

18 Defendants.

No. 2:22-cv-00272-TOR

**DEFENDANTS' MOTION
REGARDING SEALING
PURSUANT TO FEBRUARY
14, 2024, ORDER (ECF NO. 38)**

**06/03/2024
Without Oral Argument**

I. INTRODUCTION

Defendants Joseph H. Emmons and Osprey Field Consulting LLC bring this Motion pursuant to the Court’s Order Granting Defendants’ Motion to Compel, dated February 14, 2024 (ECF No. 38) (“Order”). Paragraph 6 of the Order directs the parties to file material subject to certain non-disclosure agreements (“NDAs”) under seal absent permission from all parties to the NDAs to file them publicly. ECF No. 38 at 9-10. Defendants are filing material that may be subject to the NDAs to support their concurrently filed Response to Plaintiff’s Motion to Dismiss Under Rule 41(a)(2). All parties to the NDAs have not consented to filing this material in the public record. Although Defendants do not believe that these materials qualify for sealing under the relevant Ninth Circuit standard, Defendants are filing these materials under seal to comply with the Court’s Order and give any party to the NDAs who objects to disclosure an opportunity to present their reasons to the Court. Absent objections which are persuasive to the Court, Defendants recommend that the materials be unsealed and that Paragraph 6 of the Court’s Order be lifted.

II. FACTUAL BACKGROUND

Defendants previously moved to compel production of documents and testimony subject to NDAs in this case. *See* ECF No. 35 (“Motion to Compel”). In granting Defendants’ Motion to Compel, the Court found “[t]he materials and information sought which are protected by the NDAs appear relevant and proportional ... to one of Defendants’ chief defenses: namely, that Defendants could not have defamed Plaintiff or portrayed her in a false light because the statements the flyer made about her pertaining to [Eric] Renner’s alleged misconduct and her

1 alleged coverup thereof were in fact true.” ECF No. 38 at 7. The Court ordered
2 third parties United Food and Commercial Workers Union Local 3000 (“UFCW
3 3000) and Mr. Renner to produce documents subject to the NDAs and responsive to
4 Defendants’ subpoenas, including the NDAs themselves. *Id.* at 9. The Court also
5 ordered that the NDAs did not preclude future discovery of documents and
6 deposition testimony subject to them. *Id.* at 7-10.

7 Paragraph 6 of the Order states:

8 The parties shall treat all NDA Material [i.e., material subject to the
9 NDAs] produced in this case as confidential. The parties shall (1)
10 use NDA material only for purposes of this litigation, (2) disclose
11 NDA material only to persons to whom it is reasonably necessary to
12 disclose the information for purposes of this litigation, and (3)
13 confer with the parties to the Agreements before disclosing any
14 NDA material in court filings to determine whether they will
15 consent to disclosure, whether the filing can be redacted, or whether
16 a motion to seal is warranted. If a party to the agreements objects to
17 the requested disclosure, the filing party shall redact the material or
18 file it under seal. The objecting party must then file its own brief
19 and/or declaration in response to the filing party’s motion to seal,
20 providing reasons for keeping the NDA material under seal.

21 *Id.* at 9-10 (¶ 6).

22 After the Court issued its Order, UFCW 3000 and Mr. Renner produced
23 documents that may be subject to the NDAs, and Defendants deposed three
witnesses—Adam Jackson, Laurel Fish, and Alex Garcia—whose testimony also
may be subject to the NDAs. Declaration of Sara A. Fairchild (“Fairchild Decl.”)
¶ 2. Plaintiff later produced the same documents UFCW 3000 produced under the
Court’s Order. *Id.*

1 Defendants now seek to use documents and deposition testimony that may be
2 subject to the NDAs to support Defendants' concurrently filed Response to
3 Plaintiff's Motion to Dismiss Under Rule 41(a)(2) ("Response Brief"). Specifically,
4 Defendants rely on the following exhibits to the Declaration of John A. DiLorenzo
5 in Support of Defendants' Response to Plaintiff's Motion to Dismiss Under Rule
6 41(a)(2) ("DiLorenzo Decl."), which may be subject to the NDAs:

- 7 • **Exhibit 16** – This exhibit contains the relevant NDAs. UFCW 3000
8 produced these documents with the Bates stamps UFCW 3000 Resp –
9 006001 – Subp. #3 through UFCW 3000 Resp – 006018 – Subp. #3.
- 10 • **Exhibit 17** – This exhibit contains an email exchange concerning
11 scheduling witness interviews that preceded the NDAs. UFCW 3000
12 produced this document with the Bates stamp UFCW 3000 Resp – 006047
13 – Subp. #3.
- 14 • **Exhibit 18** – This exhibit contains an email from Plaintiff's counsel Aaron
15 Streepy that attached drafts of the NDAs. The exhibit does not include the
16 attachments. UFCW 3000 produced this document with the Bates stamp
17 UFCW 3000 Resp – 006226 – Subp. #3.
- 18 • **Exhibit 20** – This exhibit contains excerpts from the transcript of Adam
19 Jackson's deposition.
- 20 • **Exhibit 21** – This exhibit contains excerpts from the transcript of Laurel
21 Fish's deposition.
- 22 • **Exhibit 22** – This exhibit contains excerpts from the transcript of Alex
23 Garcia's deposition.

1 Defendants also seek to use information from these documents in their Response
2 Brief.

3 Pursuant to the Court's Order, Defendants' counsel contacted the relevant
4 parties to the NDAs and requested their permission to file the above-listed
5 documents publicly. Fairchild Decl. ¶¶ 4-5. Not all parties to the NDAs consented.
6 *Id.* ¶ 6. Defendants therefore are filing publicly a redacted version of their Response
7 Brief, and filing under seal the above-listed exhibits and an unredacted version of
8 the Response Brief.¹

9 As discussed below, Defendants do not believe that the materials filed under
10 seal should remain under seal. Defendants will serve a copy of this Motion on the
11 parties to the NDAs.

12 III. ARGUMENT & AUTHORITY

13 There is a "strong presumption" in favor of public access to court records.
14 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). A
15 party seeking to seal judicial records that are "more than tangentially related to the
16 underlying cause of action" must provide "compelling reasons" for doing so. *Ctr.*
17 *for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1099, 1101 (9th Cir. 2016).
18 The "compelling reasons" standard is a "stringent" one, *id.* at 1096, and must be

19 _____
20 ¹ Defendants have also redacted portions of DiLorenzo Declaration Exhibits 8 and 9
21 that may be subject to the NDAs pursuant to the Court's Order. Because Defendants
22 do not rely on these portions in their Response Brief, Defendants do not include them
23 in this Motion.

1 “supported by specific factual findings that outweigh the general history of access
2 and the public policies favoring disclosure.” *Kamakana*, 447 F.3d at 1178-79.

3 The “compelling reasons” standard should apply here because Defendants’
4 Response Brief is “more than tangentially related” to the merits of Plaintiff’s claims.
5 Specifically, Defendants argue that they are entitled to attorneys’ fees as a condition
6 of dismissal in part because Plaintiff’s claims lack merit. Response Br. at 4-5, 10.

7 Defendants do not believe that the sealed exhibits or information derived from
8 them in Defendants’ Response Brief qualify for sealing under the “compelling
9 reasons” standard. Rather, Defendants are filing these materials under seal pursuant
10 to Paragraph 6 of the Court’s Order and to give the parties to the NDA an opportunity
11 to tell the Court why sealing may be necessary. ECF No. 38 at 10.

12 If any party to the NDAs wishes to maintain any of these materials under seal,
13 that party has the burden of demonstrating “compelling reasons” for this Court to do
14 so. *See id.*; *Ctr. for Auto Safety*, 809 F.3d at 1096-97. If no party responds to
15 Defendants’ Motion, or the Court determines that any proffered reasons for sealing
16 do not meet the “compelling reasons” standard, Defendants respectfully submit that
17 the materials should be filed in open court.

18 IV. CONCLUSION

19 For these reasons, Defendants respectfully ask the Court to order that the
20 material Defendants are filing under seal in connection with their Response to
21 Plaintiff’s Motion to Dismiss Under Rule 41(a)(2) be unsealed and filed in the public
22 record. Defendants further respectfully request the Court consider whether in light
23

1 of the circumstances, Paragraph 6 of the Court's February 14, 2024, Order (ECF No.
2 38) should be lifted altogether.

3 DATED this 3rd day of May, 2024.

4
5 Attorneys for Defendants

6 By: s/ Sara A. Fairchild

Ambika Kumar, WSBA #38237

7 Sara A. Fairchild, WSBA #54419

8 DAVIS WRIGHT TREMAINE LLP

920 Fifth Avenue, Suite 3300

Seattle, WA 98104-1610

Telephone: (206) 622-3150

10 Fax: (206) 757-7700

11 ambikakumar@dwt.com

sarafairchild@dwt.com

12 John A. DiLorenzo (*pro hac vice*)

13 DAVIS WRIGHT TREMAINE LLP

1300 S.W. Fifth Avenue, Suite 2400

14 Portland, OR 97201

Telephone: (503) 241-2300

15 Fax: (503) 778-5299

16 johndilorenzo@dwt.com

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I caused the document to which this certificate is attached to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Aaron Streepy
Jim McGuinness
STREEPY LAW, PLLC
4218 227th Ave Ct. East
Buckley, WA 98321
aaron@mcguinnessstreepy.com
jim@mcguinnessstreepy.com

***Attorneys for Plaintiff Faye Guenther and United
Food and Commercial Workers Union Local 3000***

I further certify that on the same date, I caused the same document to be served by email and mail to the following:

Bill Gilbert
Gilbert Law Firm, P.S.
421 W. Riverside, Ste 353
Spokane, WA 99201
bill@wagilbert.com
Attorney for Eric Renner

David W. Ballew
Reid, Ballew, Leahy & Holland L.L.P.
100 West Harrison Street
North Tower, Suite 300
Seattle, WA 98119
david@rmbllaw.com
Counsel for Teamsters Local 690

Adam Jackson
636 East Magnesium Road
Apartment 353
Spokane, WA 99208
Adamyjackson1@gmail.com

1 Leslie Cowin
2 18901 East Buckeye Avenue
3 Spokane Valley, WA 99022
4 Leslie-64@hotmail.com

5 Katie Dugger
6 7004 East Tenth Avenue
7 Spokane Valley, WA 99212
8 Dugger38@gmail.com

9 Amy Poston
10 10124 East Walton Court
11 Spokane, WA 99206
12 amierce@gmail.com

13 Austin Depaolo
14 411 Northwest Flanders Street
15 Apartment 409
16 Portland, OR 97209
17 Austin_glass@msn.com

18 Sandra Huggins
19 28311 North Selkirk View Drive
20 Chattaroy, WA 99003
21 Sandrah217@gmail.com

22 Laurel Fish
23 3614 West Alice Avenue
Spokane, WA 9920
Laurel.fish@gmail.com

Alex Garcia
1503 South Rockwood Blvd
Spokane, WA 99203
Ajgarcia2147@gmail.com

I declare under penalty of perjury that the foregoing is true and accurate.

DATED this 3rd day of May, 2024.

By: s/Sara A. Fairchild

Sara A. Fairchild, WSBA #54419